

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an Application for mandates
in the nature of writs of *Mandamus* and
Certiorari in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

**Court of Appeal Case No.
CA (Writ) 0505/2023**

1. **Mallika Wanigasekera,**
No.15/3, Chakindarama Road,
Ratmalana.
2. **Hemawathi Kannangara,**
No.15/2, Chakindarama Road,
Ratmalana.
3. **L. Lalitha Ranjani Fernando,**
No.15/5A, Chakindarama Road,
Ratmalana.

Petitioners

Vs.

1. **Municipal Council of Dehiwala-
Mount Lavinia,**
Anagarika Dharmapala Road,
Dehiwala.
2. **Municipal Commissioner,**
Municipal Council of Dehiwala-
Mount Lavinia,
Anagarika Dharmapala Road,
Dehiwala.
3. **W. Ashoka Janet Silva,**
No.15/7, Chakindarama Road,
Ratmalana.

Respondents

Before: **K. M. S. DISSANAYAKE, J.**

Counsel: Viran Fernando with Sahiru Jasinghe instructed by Gamali Amaratunge for the Petitioners.

W. Dayaratne, P.C. with R. Jayawardena for the 1st and 2nd Respondents.

Shantha Jayawardena with Sajana de Zoysa for the 3rd Respondent.

Written Submissions by
the Petitioners
tendered on : 05.06.2025

Written Submissions
by the 1st and 2nd
Respondents
tendered on : 12.06.2025

Written Submissions
by the 3rd
Respondent
tendered on : 05.05.2025

Decided on : 05.08.2025

K. M. S. DISSANAYAKE, J.

Argument in the instant application by way of written submissions had been concluded before a bench of two Justices of this Court comprising of His Lordship, the then, Acting President of the Court of Appeal Hon. Justice Mohammed Laffar Thahir and Justice K. M. S. Dissanayake and reserved it for the judgment on 20.06.2025 before the same bench. However, by the time, this matter came up before this Court for the judgment on 20.06.2025, His Lordship Justice Mohammed Laffar Thahir had gone on retirement. Under those circumstances, Counsel on all sides urged and consented to the judgment of this case being pronounced by His Lordship Justice K.M.S. Dissanayake notwithstanding the retirement of His Lordship Justice

Mohammed Laffar Thahir rather than going into a re-argument. In the circumstances, His Lordship Justice Dissanayake being one of the two Justices before whom argument of this application had been heard and concluded by way of written submissions, is now, proceeding to the judgment of the instant application as consented and urged by Counsel for all the parties.

The 1st to 3rd Petitioners in the instant application have invoked the supervisory jurisdiction of this Court under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as the 'Constitution') seeking *inter-alia*, a mandate in the nature of writ of *certiorari* quashing the decision taken by the 1st and/or the 2nd Respondents to abstain from enforcing the order of the learned Magistrate Court of Mount Lavinia dated 9th of May, 2008 marked as 'A1' (*Vide-prayer 'c' of the petition of the Petitioners*); a mandate in the nature of a writ of *mandamus* directing the 1st and 2nd Respondents to execute the order of the Magistrate Court of Mount Lavinia dated 9th of May, 2008 marked as 'A1' (*Vide-prayer 'd' of the petition of the Petitioners*); and a mandate in the nature of a writ of *mandamus* directing the 1st and 2nd Respondents to demolish the building and/or any other structures identified as unauthorized by the order of the Magistrate Court of Mount Lavinia dated 9th of May, 2008 marked as 'A1' (*Vide-prayer 'e' of the petition of the Petitioners*).

When, this matter came on before us on 04.10.2023, the Petitioners as well as all the Respondents were duly represented and this Court had directed notices of the instant application to be issued on all the Respondents granting each of them an opportunity to file objections. However, record shows that, the 1st and 2nd Respondents have opted not to file objections to the instant application while, only the 3rd Respondent had filed objections thereto. With the counter-affidavit being filed in Court by the Petitioners, this matter was set down for argument and at the argument, Counsel consented to dispose of the same by way of written submissions and

accordingly, written submissions were furnished to this Court by the respective parties. Hence, I am proceeding to the judgment accordingly.

The Petitioners have preferred the instant application to this Court seeking *inter-alia*, a mandate in the nature of a writ of *certiorari* quashing the decision taken by the 1st and/or 2nd Respondents to abstain from enforcing the order of the learned Magistrate Court of Mount Lavinia dated 09th May 2008 marked as 'A1'; a mandate in the nature of a writ of *mandamus* directing the 1st and 2nd Respondents to execute the Order of the Magistrate Court of Mount Lavinia dated 09th May 2008 marked as 'A1'; a mandate in the nature of a writ of *mandamus* directing the 1st and 2nd Respondents to demolish the building and/or any other structures identified as unauthorized by the Order of the Magistrate Court of Mount Lavinia 09th May 2008 marked as 'A1', alleging that the 1st and 2nd Respondents had failed to execute the demolition order issued by the learned Magistrate of Mount Lavinia dated 09.05.2008 in the case bearing No. 3257/S/7 (**A1**) in an application made thereto by the 1st Respondent under and in terms of section 28A(3) of the Urban Development Authority Law (as amended) (hereinafter called and referred to as the "UDA Law"); and that in the circumstances, the learned Magistrate of Mount Lavinia had advised the Petitioners to take appropriate administrative law remedies compelling the 1st and 2nd Respondents to execute the order made by him (**A1**) inasmuch as the Magistrate did not have the jurisdiction to compel the 1st Respondent to execute the order already made by him. This being the pivotal basis urged and disclosed in their application by the Petitioners for the institution of the instant application before this Court seeking the writs in the nature of a *certiorari* and *mandamus*.

Hence, the substantive relief sought by the Petitioners in the instant application is to compel the 1st and 2nd Respondents by way of a mandate in the nature of a writ of *mandamus* to execute the demolition order made by the learned Magistrate of Mount Lavinia as far back as 09.05.2008 in the case bearing No. 3257/S/7 in an application made thereto by the 1st Respondent under and in terms of section 28A(3) of the UDA Law (**A1**).

In view of the pivotal basis so urged and disclosed in their petition by the Petitioners as enumerated above, the pivotal question that would primarily, arise for our consideration and determination in the instant application being; **Is the learned Magistrate of Mount Lavinia not vested with the jurisdiction to compel the 1st and 2nd Respondents to execute his own order made by him under section 28A(3) of the UDA Law authorizing them to demolish the unauthorized construction held by Court to have been erected by the 3rd Respondent to the instant application as morefully, described in the application made thereto by the 1st Respondent under section 28A(3) of the UDA Law even, in the event of the 1st and 2nd Respondents failing to execute the same?; and if so, Can an order made by a Magistrate under section 28A(3) of the UDA Law compelling a party to that action, of the execution of an order, be enforceable in such an eventuality, by a writ of *mandamus* that may be issued by a different forum, namely; this Court, to that of the one which made order for demolition of the unauthorized structure erected by the 3rd Respondent, namely; the Magistrate Court of Mount Lavinia? as alleged by the Petitioners.**

The question so posed to ourselves for our consideration and determination consists of two parts, namely;

a) Is the learned Magistrate of Mount Lavinia not vested with the jurisdiction to compel the 1st and 2nd Respondents to execute his own order made by him under section 28A(3) of the UDA Law authorizing them to demolish the unauthorized construction held by Court to have been erected by the 3rd Respondent to the instant application as morefully, described in the application made thereto by the 1st Respondent under section 28A(3) of the UDA Law even, in the event of the 1st and 2nd Respondents failing to execute the same?

b) and if so, Can an order made by a Magistrate under section 28A(3) of the UDA Law compelling a party to that action, of the execution of an order, be enforceable in such an eventuality, by a

writ of mandamus that may be issued by a different forum, namely; this Court, to that of the one which made order for demolition of the unauthorized structure erected by the 3rd Respondent, namely; the Magistrate Court of Mount Lavinia?

In other words, **Is this Court vested with jurisdiction to issue a writ of mandamus compelling a party to that action, of the execution of an order made by a Magistrate under section 28A(3) of the UDA Law in case the Magistrate himself is vested with jurisdiction so to do?**

let me now, set out below the facts and circumstances, as averred in their petition by the Petitioners which according to them have led them to have preferred the instant application before this Court seeking writs in the nature of *certiorari* and *mandamus* as prayed for in prayers 'c', 'd', and 'e' of their petition as enumerated above.

The Petitioners being the owners and residents of the addresses bearing No. 15/3, 15/2 and 15/5A of Chakindarama Road, Ratmalana respectively; that the 1st Respondent is a body corporate; that the 1st Respondent is a body corporate duly incorporated under the, Municipal Council's Ordinance No. 29 of 1947, as amended, capable of suing and being sued in its corporate name and having its registered office at the captioned address; that the 1st Respondent has also been delegated the powers vested in the Urban Development Authority and has been specifically delegated the powers set out in section 28 of the Urban Development Authority Act as amended; that the term of office of the 1st Respondent Municipal Council came to an end on the 19th March 2023 and therefore, the office of Mayor, the deputy Mayor and that of the member councilors remain vacant to date; that the 2nd Respondent is the Municipal Commissioner of the 1st Respondent Council and next to its Mayor the chief executive officer of the 1st Respondent Municipal Council; that during the pendency of a vacancy in the office of the Mayor and the Deputy Mayor the 2nd Respondent is statutorily required to perform and discharge all the rights, privileges, powers, duties and functions vested in or conferred or imposed on the Mayor by law; that the Petitioners state that the 3rd Respondent was made a party as the demolition

orders issued by the Magistrates Court of Mount Lavinia pertains to the property of the 3rd Respondent and as the orders sought from this court affects the 3rd Respondent, although, there are no substantial reliefs sought against the 3rd Respondent; that the only access available to the Petitioners to their residences is through 10 feet wide Private Road leading to the aforesaid Chakindarama Road according to the survey plan dated 14.08.1962 depicting the residences of the Petitioners and the residence of the 3rd Respondent (**A2**); that as depicted in the said survey plan marked (**A2**), the aforesaid Private road which leads to Chakkindarama Road is only a 10 feet wide narrow road; that due the illegal conduct of the 3rd Respondent along with the collusive assistance provided by the 1st and 2nd Respondents aforesaid has resulted in further narrowing the road to 7 feet near the house of the 3rd Respondent substantially restricting or adversely affecting the peaceful use of the said Private Road leading to Chakindarama Road by the Petitioners and the other residents living beside the said road; that, due to this illegal conduct the Petitioners have been prevented from bringing their private vehicles to their houses, get services of a gully bowser to clean their toilet pits or even bring down building materials to renovate their houses; that on or about the year 2008 the 3rd Respondent commenced the expansion of her residence and that the said expansion extended beyond the boundaries of the 3rd Respondent's land and utilized a significant portion of the aforesaid Private road leading to Chakindarama road; that all attempts at amicably preventing the illegal construction failed compelling the Petitioners and other residents of this private road to complain to the police as well as to the 1st Respondent; that all efforts by the 1st Respondent to convince the 3rd Respondent to cease the said constructions failed as the 3rd Respondent continued the expansion of the residence forcibly and most arbitrarily; that in the said circumstances the 1st Respondent issued a notice in terms of section 28A of the Urban Development Authority Act as amended directing the 3rd Respondent to seize all such construction work and to demolish or alter all building work so that the construction is done in compliance with law; that the 3rd Respondent failed to comply with the said notices which prompted the 1st Respondent to make an application dated 05th July 2007 in terms of section 28A (3) of the Urban Development

Authority Act as amended to the Magistrate Court of Mount-Lavinia (A3); that in the course of the inquiry it transpired that the 3rd Respondent had not obtained a development permit in terms of Urban Development Authority Act and thus the entire construction including her residence was unlawful, unauthorized and contrary to law; that despite the 1st Respondent authority granting the 3rd Respondent notice and adequate time to demolish the unauthorized construction the 3rd Respondent deliberately refrained from complying with the directive contained in the notice; that in said circumstances learned Magistrate of Mount Lavinia was compelled to issue an order in terms of section 28A(3) of the Urban Development Authority Act as amended authorizing the 1st Respondent to demolish the said unauthorized constructions of the 3rd Respondent (**A1**); that immediately thereafter the 3rd Respondent made the application bearing CA (Writ)/451/2018 to this Court by Petition seeking writs in the nature of *certiorari* and *mandamus* to quash the aforesaid Order of the Magistrate Court dated 09th May 2008; that at this point these Petitioners and several other residents of the aforesaid private road leading to Chakindarama road fearing that the order of learned Magistrate could be challenged and rendered invalid by acts of collusion between the 1st and 3rd Respondent intervened in to the said application; that thereafter this Court having heard the submissions of all parties by judgement dated 02nd April 2013 dismissed the said application of the 3rd Respondent (**A4**); that since then Petitioners along with the other residents of this Private Road that leads to Chakindarama road have made numerous representations to the 1st Respondent as well the Ministry of Local Government etc. bringing to their notice that there was no impediment existing preventing them from executing the order of the learned Magistrate Court and demolishing the unauthorized constructions erected by the 3rd Respondent (**A5(i) to A5(xi)**); that as the 1st Respondent further failed to comply with the Magistrate Court order, the Petitioner along with other residents made an application by way of an Affidavit dated 27th March 2022 to the learned Magistrate Court bringing to the learned Magistrate's notice that an order of the Court remained unfulfilled for a period in excess of more than 10 years (**A**); that the 1st Respondent appeared in court upon receiving notice of the said

application and informed the court that it will obtain the assistance of Urban Development Authority to carry out the said order; that however despite the learned Magistrate granting the 1st Respondent several opportunities to execute the demolishing order, the 1st Respondent actively colluding with the 3rd Respondent deliberately neglected and/or refused to execute the order; that in the said circumstances, the Petitioners verily believe that the 1st and/or 2nd Respondent have made a decision to desist from enforcing the Order of the Magistrate Court of Mount Lavinia dated 09th May 2008; that any such decision would be patently illegal inasmuch as it has been arrived at by taking into account improper considerations, chief among which is to secure the property interests of the 3rd Respondent despite the detriment to the Petitioners; that the Petitioners verily believe that the aforesaid decision has been made by the 1st and/or 2nd Respondent surreptitiously and secretly and thus is not available as a public record; that in the said circumstances, the Petitioners seek an order of this Court directing the 1st and/or 2nd Respondent to produce to this court any orders and/or decisions made by the 1st and/or 2nd Respondent to refrain from enforcing the Order of the Magistrate Court of Mount Lavinia dated 09th May 2008; that thereafter the learned Magistrate advised the Petitioners to take appropriate administrative law remedies as the Magistrate Court did not have the jurisdiction to compel the 1st Respondent to execute the order already made the said court; that in those circumstances the Petition invokes the powers of Your Lordship's Court in terms of Article 140 of the Constitution to compel the 1st and 2nd Respondent to execute the order of the learned Magistrate Court dated 09th May 2008; that the conduct of the 1st and 2nd Respondent as aforesaid amounts to the wilful failure to carry out one or more public duties including; (a) the failure to execute an Order of Court that was sought by the 1st Respondent itself acting in pursuance of section 28A(3) of the Urban Development Authority Act as amended; (b) the arbitrary and improper use of discretion to discontinue measures to execute the order of the learned Magistrate dated 09th May 2008; (c) the failure or the breach of the 1st Respondent responsibility to uphold the law equally fairly and uniformly; that the aforesaid conduct of the 1st and 2nd Respondent amounts to failure

of the 1st and 2nd Respondent to fulfil the Petitioners legitimate expectation to have an order issued by a court in favour of the 1st Respondent duly executed; that in the circumstances stated above warrant the exercise of this Court's discretionary powers vested in terms of Article 140 of the Constitution to grant and issue mandate in the nature of a writ of *certiorari* quashing the decision taken by the 1st and/or 2nd Respondents to abstain from enforcing the order of the learned Magistrate Court of Mount Lavinia dated 09th May 2008 (A1); a writ of *mandamus* directing the 1st and 2nd Respondent to execute the Order of the Magistrate Court of Mount Lavinia dated 09th May 2008 (A1); A writ of *mandamus* directing the 1st and 2nd Respondents to demolish the building and/or any other structures identified as unauthorized by the Order of the Magistrate Court of Mount Lavinia dated 09th May 2008 (A1).

It is in this backdrop of the facts and circumstances of the instant application, I would now, propose to deal with the first part of the question so posed to ourselves for our consideration and determination in the instant application as enumerated above, namely;

a) Is the learned Magistrate of Mount Lavinia not vested with the jurisdiction to compel the 1st and 2nd Respondents to execute his own order made by him under section 28A(3) of the UDA Law authorizing them to demolish the unauthorized construction held by Court to have been erected by the 3rd Respondent to the instant application as morefully, described in the application made thereto by the 1st Respondent under section 28A(3) of the UDA Law even, in the event of the 1st and 2nd Respondents failing to execute the same?; [Emphasis is mine]

It is in this context, I would think it expedient to examine section 28A of the UDA Law as amended in its entirety which enacts thus;

“28A (1) Where in a development area, any development activity is commenced continued, resumed or completed without permit or contrary to any term or condition set out in a permit issued in respect of such development activity, the Authority may, in addition to any

other remedy available to the Authority under this Law, by written notice require the person who is executing or has executed such development activity, or has caused it to be executed, on or before such day as shall be specified in such notice, not being less than seven days from the date thereof;

(a) to cease such development activity forthwith; or

(b) to restore the land on which such development activity is being executed or has been executed, to its original condition; or

(c) to secure compliance with the permit under the authority of which that development activity is carried out or engaged in, or with any term or condition of such permit, and for the purposes of compliance with the requirements aforesaid;

(i) to discontinue the use of any or building; or

(ii) to demolish or alter any building or work.

(2) It shall be the duty of the person on whom a notice is issued under subsection (1) to comply with any requirement specified in such notice within the time specified in such notice or within, such extended time as may be granted by the Authority on application made in that behalf.

(3)(a) Where any person has failed to comply with any requirement contained in any written notice issued under subsection (1) within the time specified in the notice or within such extended time as may have been granted by the Authority, the Authority may, by way of petition and affidavit, apply to the Magistrate to make an Order authorizing the Authority to

(a) to discontinue the use of any land or building;

(b) to demolish or alter any building or work;

(c) to do all such other acts as such person was required to do by such notice, as the case may be,

and the Magistrate shall after serving notice on the person who had failed to comply with the requirements of the Authority under subsection (1), if he is satisfied to the same effect, make order accordingly.

(b) If such person undertakes to discontinue the use of the land or building or to demolish or alter the building or work, or to do such other acts as are referred to in paragraph (a) of subsection 3 of section 28A, the Magistrate may, if he thinks fit, postpone the operation of the Order for such time not exceeding two months as he thinks sufficient for the purpose of giving such person an opportunity of complying with such requirement.";

(4) Where a mandatory order has been made under subsection (3), it shall be the duty of the police authorities to render all necessary assistance to the Authority in carrying out the order.

(5) The Authority shall be entitled to recover any reasonable expenses incurred by the Authority in demolishing or altering any building or work in pursuance of an order made by the Magistrate under sub section (3).

(6) The preceding provisions of this section shall not affect any liability incurred by such person by reason of his failure to comply with such notice."

Upon a careful reading of the provisions of the section 28A(3) of the UDA Law in its totality, it becomes manifestly, clear, that it has conferred jurisdiction upon a Magistrate to make "**a mandatory order**" in pursuant to an application made thereto under and in terms of the section 28A(3) of the UDA Law as amended, by the Urban Development Authority or any officer of a local authority to whom any of its powers, duties and functions relating to planning within any area declared to be a development area under section 3 is delegated by the Urban Development Authority by virtue of the powers vested in it by section 23(5) of the UDA Law as amended, **authorizing the Urban Development Authority or such officer (a) to discontinue the use of any land or building; (b) to demolish or alter any building or work; (c)**

to do all such other acts as such person was required to do by such notice, as the case may be. [Emphasis is mine]

Furthermore, in terms of the section 28A(3)(b), **If such person undertakes to discontinue the use of the land or building or to demolish or alter the building or work, or to do such other acts as are referred to in paragraph (a) of subsection 3 of section 28A, the Magistrate may, if he thinks fit, postpone the operation of the Order for such time not exceeding two months as he thinks sufficient** for the purpose of giving such person an opportunity of complying with such requirement. [Emphasis is mine]

Let me then, examine the section 28D of the UDA Law as amended and it enacts thus;

“28D Every application for, an order made under paragraph (a) of subsection (3) of section 28A, shall be finally disposed of within " a period of sixty days from the date of such application, **and where the Magistrate makes an Order in pursuance of any application. authorizing the Authority**

- (a) to discontinue the use of any land or building; or**
- (b) to demolish or alter any building or work; or Urban Development Authority (Special Provisions) 5 Act, No. 44 of 1984;**
- (c) to do such other acts as are referred to in paragraph (a) of subsection (3) of section 28A,**

the Magistrate **“shall make” “all such Orders as are necessary to effect compliance” “with such Order” “within a period of ninety days from the date of the making of such application.”.**
[Emphasis is mine]

A careful analysis of section 28D of the UDA Law as amended manifestly, shows that it specifically, and explicitly, sets down the time period within which an application under section 28A(3) of the UDA Law as amended for

an order **a)** to discontinue the use of any land or building; or **b)** to demolish or alter any building or work; **c)** to do such other acts as are referred to in paragraph (a) of subsection (3) of section 28A, should be disposed of by the Magistrate, wherein it mandates that the Magistrate **“shall make” “all such Orders as are necessary to effect compliance” “with such Order” “within a period of ninety days from the date of the making of such application”** [Emphasis is mine]

The use of the word **“shall”** in section 28D of the UDA Law as amended is in my view, a pointer to the legislative intent for; Sir Charles Edwin Odgers in his work “The Construction of Deeds and Statutes”-4th Edition at page 268 which was quoted in the case of Kandiah Vs. Abeykoon Srisikantha's Law Reports, Vol. IV 96 at page 100, states,

“‘Must’ is naturally *prima facie* imperative and admits of no discretion and so is ‘Shall’.”

The use of the word **“shall”** in section 28D of the UDA Law as amended, is therefore, naturally *prima facie* imperative and admits of no discretion, so that it is imperative that, the Magistrate **“shall make” “all such Orders as are necessary to effect compliance” “with such Order” “within a period of ninety days from the date of the making of such application”** [Emphasis is mine]

In the light of section 28D of the UDA Law as amended, the legislature had in plain and simple language, conferred upon the Magistrate full power and the jurisdiction in unambiguous terms to make **“all such Orders as are necessary to effect compliance” “with such Order”** made by him under section 28A(3) of the UDA Law as amended **“within a period of ninety days from the date of the making of such application”** [Emphasis is mine]

A plain reading of the sections 28A(3)(a), 28A(3)(b) and 28D of the UDA Law as amended altogether, manifestly, shows that a Magistrate has unmistakably, explicitly and expressly, been given power **i) not only to make a mandatory order** authorizing the Urban Development Authority or

such officer (a) to discontinue the use of any land or building; (b) to demolish or alter any building or work; (c) to do all such other acts as such person was required to do by such notice, as the case may be, **ii) but also to postpone if he thinks fit, the operation of such order** for such time not exceeding two months as he thinks sufficient for the purpose of giving such person an opportunity of complying with such requirement if such person undertakes to discontinue the use of the land or building or to demolish or alter the building or work or to do such other acts as are referred to in paragraph (a) of subsection 3 of section 28A of the UDA Law as amended and **iii) also to make “all such Orders as are necessary to effect compliance” “with such Order”** made by him under section 28A(3) of the UDA Law as amended **“within a period of ninety days from the date of the making of such application”**. [Emphasis is mine]

In the light of the above, the Magistrate has expressly, been given wide and ample power by section 28D of the UDA Law as amended **to make “all such Orders as are necessary to effect compliance” “with such Order”** made by him under section 28A(3) of the UDA Law as amended **“within a period of ninety days from the date of the making of such application”** and therefore, it is statutorily, incumbent upon a Magistrate **to make “all such Orders as are necessary to effect compliance” “with such Order”** made by him under section 28A(3) of the UDA Law as amended **“within a period of ninety days from the date of the making of such application”**. Hence, no amount of discretion has been vested with the Magistrate at any stage wherever the question of compliance of the order made by him under section 28A(3) of the UDA Law as amended would be in issue which would in my opinion, totally, militate against the assertion of the Petitioners, namely;

the learned Magistrate of Mount Lavinia is not vested with the jurisdiction to compel the 1st and 2nd Respondents to execute the order made by him under section 28A(3) of the UDA Law authorizing them to demolish the unauthorized construction held by Court to have been erected by the 3rd Respondent to the instant application as morefully, described in the application made thereto by the 1st Respondent under

section 28A(3) of the UDA Law even, in the event of the 1st and 2nd Respondents failing to execute the same, and therefore, it is wholly, unconceivable and thus, is untenable in law, and therefore, it should be rejected *in-limine*. [Emphasis is mine]

I would therefore, hold that the instant application is liable to be dismissed *in-limine* on this ground alone.

I would next, propose to deal with the second part of the question so posed to ourselves for our consideration and determination in the instant application as enumerated above, namely;

b) and if so, Can an order made by a Magistrate under section 28A(3) of the UDA Law compelling a party to that action, of the execution of an order, be enforceable in such an eventuality, by a writ of mandamus that may be issued by a different forum, namely; this Court, to that of the one which made order for demolition of the unauthorized structure erected by the 3rd Respondent, namely; the Magistrate Court of Mount Lavinia?

As observed by me elsewhere in this judgment, a Magistrate has expressly, been given wide and ample power by section 28D of the UDA Law as amended **to make “all such Orders as are necessary to effect compliance” “with such Order”** made by him under section 28A(3) of the UDA Law as amended **“within a period of ninety days from the date of the making of such application”** and therefore, it is statutorily, incumbent upon a Magistrate **to make “all such Orders as are necessary to effect compliance” “with such Order”** made by him under section 28A(3) of the UDA Law as amended **“within a period of ninety days from the date of the making of such application”** and hence, no amount of discretion has been vested with the Magistrate at any stage wherever the question of compliance of the order made by him under section 28A(3) of the UDA Law as amended but, **to make “all such Orders as are necessary to effect compliance” “with such Order”** made by him under section 28A(3) of the UDA Law as amended **“within a period of ninety days from the date of the making of such application”**. [Emphasis is mine]

In the light of the section 28D of the UDA Law as amended, it becomes abundantly clear, that whenever the question of compliance arises, the real remedy would lie in the Magistrate Court and nowhere else for; it is only, the Magistrate who is statutorily, incumbent **to make “all such Orders as are necessary to effect compliance” “with such Order”** made by him under section 28A(3) of the UDA Law as amended **“within a period of ninety days from the date of the making of such application”** and therefore, in the event of the Urban Development Authority or any such officer allegedly, failing to comply with such an order as made by a Magistrate under section 28A(3) of the UDA law amended, it is the Magistrate who is statutorily, incumbent **to make “all such Orders as are necessary to effect compliance” “with such Order”** made by him under section 28A(3) of the UDA Law as amended **“within a period of ninety days from the date of the making of such application”** and not any other forum like this Court.

In the circumstances, a person who alleges non-compliance by the Urban Development Authority or any such officer, of such an order as made by a Magistrate under section 28A(3) of the UDA Law amended, is statutorily, bound to resort to such Magistrate Court from which the Order made under section 28A(3) of the UDA law amended for relief for; it is the Magistrate who is statutorily, incumbent **to make “all such Orders as are necessary to effect compliance” “with such Order”** made by him under section 28A(3) of the UDA Law as amended **“within a period of ninety days from the date of the making of such application”** and not any other forum like this Court and therefore, this Court should not in my opinion, make any orders in the nature of writs of *certiorari* or *mandamus* directing the compliance of such an order by the Urban Development Authority or any such officer in abrogation or derogation of the express powers so conferred by the Legislature upon a Magistrate under and in terms of section 28D of the UDA Law as amended inasmuch as it is the clear and unambiguous legislative intent that it is only a Magistrate and no one else who is statutorily, incumbent **to make “all such Orders as are necessary to effect**

compliance” “with such Order” made by him under section 28A(3) of the UDA Law as amended “within a period of ninety days from the date of the making of such application”.

Hence, I would hold that, this Court has not been vested with powers to issue orders in the nature of writs of *certiorari* or *mandamus*, directing compliance by the Urban Development Authority or any such officer of such an order as made by a Magistrate under section 28A(3) of the UDA Law amended in abrogation or derogation of the express powers so conferred by the Legislature upon a Magistrate under and in terms of section 28D of the UDA Law as amended.

Hence, I would hold that the instant application is liable to be dismissed *in limine* on this ground too.

It is trite law that another equally effective and expeditious remedy is available to a Petitioner, prerogative and discretionary remedy like writs in the nature of *certiorari* and *mandamus* will not lie.

In the application, an equally effective and expeditious remedy as provided for by section 28D of the UDA Law as amended, is I would say “the substantive remedy”, available to the Petitioners.

However, the Petitioners now, seeks from this Court writs in the nature of *certiorari* and *mandamus* to compel the 1st and 2nd Respondents of due compliance of the order made as far back as 09.05.2008 by the learned Magistrate of Mount Lavinia under and in terms of the powers vested in him by section 28A(3) of the UDA Law as amended rather than pursuing and resorting to such effective, expeditious and substantive remedy as provided for by the section 28D of the UDA Law as amended on a totally erroneous basis that they were advised by the learned Magistrate to take appropriate administrative law remedies since he had no jurisdiction to compel the 1st and 2nd Respondents of the due compliance of the order of demolition issued by him under section 28A(3) of the UDA Law as amended authorizing the 1st Respondent to demolish the unauthorized structure erected by the 3rd Respondent. (Vide-paragraph 30 of the petition of the Petitioners)

Hence, I would as a matter of law, hold that the instant application of the Petitioners is liable to be dismissed *in-limine* on this ground too.

It is also well settled law that this Court will not exercise its extra-ordinary writ jurisdiction when the Petitioner is guilty of laches.

The order the performance of which is sought to be compelled by the Petitioners by way of writ of *mandamus* is one made by the learned Magistrate as far back as 09.05.2008 and the writ application filed before this Court by the 3rd Respondent seeking to quash the order of the learned Magistrate of Mount Lavinia had been rejected by this Court 02.04.2013 (Vide-paragraph 21 of the petition of the Petitioners). However, it is significant to observe that the instant application had been instituted by the Petitioners before this Court on 01.09.2023-at least more than 15 years have lapsed since the order of the learned Magistrate of Mount Lavinia and at least 10 years have lapsed since the judgment of this Court rejecting the application of the 3rd Respondent, seeking mandates in the nature of writs of *certiorari* and *mandamus* compelling the 1st and 2nd Respondents of the performance of the same.

It is however, significant to observe that the Petitioners had adduced no reason whatsoever in their pleadings or otherwise to justify and explain the in-ordinate delay in preferring the instant application before this Court which clearly, and unequivocally shows that the Petitioners had no reasonable explanation for the in-ordinate delay and therefore, they are guilty of laches thereby disentitling them to the reliefs sought in the instant application.

I would therefore, hold that the instant application ought to be liable to be dismissed on the ground of the laches on the part of the Petitioners.

In view of the foregoing, I would hold that the instant application cannot sustain both in fact and law, and therefore, not entitled to succeed.

I would thus, proceed to dismiss the instant application with costs.

However, it is to be mentioned that this judgement will not in any manner, operate as bar for the invocation by the learned Magistrate of Mount Lavinia, of the powers and/or the jurisdiction so vested in him under section 28D of the UDA Law as amended to make all such Orders as are necessary to effect due compliance of the Order dated 09.05.2008 made by him under section 28A(3) of the UDA Law as amended authorising the 1st Respondent to demolish the unauthorized construction erected by the 3rd Respondent upon an application that may be made thereto by any party for the ends of justice and to avert any possible miscarriage of justice.

JUDGE OF THE COURT OF APPEAL